

The respondent requests review of whether the claimant's medical treatment for his right knee and low back are a natural and probable consequence from his September 28, 2004 injury.

Claimant argues the respondent has not introduced any new evidence and therefore the Board should dismiss the appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

As previously noted, the claimant was receiving follow-up treatment for his left knee when he complained to Dr. Jeffrey Randall, his authorized treating physician, that he was experiencing increasing right knee pain as well as back pain due to his altered gait and use of a cane as a result of his left knee condition.

Claimant began to experience back pain in March 2005 and right knee pain in July 2005. Claimant's back and right knee pain worsened as his limp worsened. Claimant thought those conditions would improve but as his limp worsened his back and right knee pain worsened. As claimant's limp worsened he had started using a cane when he was having bad days with his left knee. And claimant denied any right knee problems before he had to start using a cane.

Dr. Randall concluded that claimant's lumbar and right knee conditions were related to his September 28, 2004 work-related injury because claimant walked with an altered gait due to his left knee. Dr. Randall further concluded claimant's right knee condition was related to injury sustained while using a cane due to the altered gait because of the condition of the left knee. Dr. Randall recommended that the right knee condition as well as the back condition should be treated before the left knee total arthroplasty because there would be additional weight bearing on the right following the left knee total arthroplasty.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*¹, the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

¹ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

Based upon the record compiled to date, claimant has proven that his September 28, 2004 accident resulted in an antalgic gait from his left knee condition. And as a natural consequence of that antalgic gait he has suffered new and distinct compensable injuries to his right knee and back.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.³

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated November 28, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February 2007.

BOARD MEMBER

c: Stephanie J. Haggard, Attorney for Claimant
Shelly E. Naughtin, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

² K.S.A. 44-534a.

³ K.S.A. 2005 Supp. 44-555c(k).